

**SACRAMENTO POLICE DEPARTMENT
ADMINISTRATIVE PENALTY APPEAL HEARING
RECORD OF DECISION**

IN THE MATTER OF:

SPD REPORT #: 18-276004

APPELLANT: John Nguyen

VIOLATION ADDRESS: 6659 Spoerriwood Ct

SACRAMENTO CITY CODE SECTION(S): 8.132.040

PROPOSED ADMINISTRATIVE PENALTY: \$389,500

HEARING EXAMINER: Camille Dixon

HEARING DATE: June 6, 2019

This matter was heard at a noticed public hearing. The following witnesses submitted a written explanation, appeared and/or testified at the hearing on behalf of either the City or the Appellant as noted below. Any written materials submitted with the protest or at the hearing were reviewed by the Hearing Examiner and are on file in the offices of the City of Sacramento.

City Staff: Officer Jesus Trejo – Sacramento Police Department
Emilio Camacho – Deputy City Attorney

Appellants: John Nguyen – Property Owner
Robert Holley – Attorney
Thanh Foxx – Attorney
Long Nguyen – Property Manager, father of Property Owner

TESTIMONY SUMMARY

City Staff:

Deputy City Attorney Emilio Camacho provided an opening statement regarding the City Code section 8.08.050 requirements for proper property management and summarized the Cultivation of Cannabis Ordinance provisions. In particular he noted that section 8.132.030 of the ordinance states that: "No person shall own, lease, occupy, or have charge or possession

of any property upon which cannabis is knowingly or unknowingly being cultivated" unless one of the exceptions apply.

Sacramento Police Department (SPD) Officer Jesus Trejo testified that on June 13, 2018, SPD received information regarding a possible illegal cannabis cultivation operation occurring at 6659 Spoerriwood Ct, Sacramento.

On July 29, 2018, as part of an investigation, an officer found a white Lexus parked at the house that was owned by Jienyuan He, who was involved with an illegal cannabis grow at Deerwater and 69th Street. The SMUD bill for the property showed the tenant as Xiao Jie between March 2017 and July 2017. Between July 2017 and April 2018, the SMUD customer was Tao Wang. Between April and August 2018 the SMUD customer was Jinyuan He. The electrical usage was very high at this property since March of 2017.

On August 31, 2018, the Sacramento Police Department executed a search warrant at 6659 Spoerriwood Ct on suspicion of illegal cannabis cultivation. No one was located inside the residence. Officers did locate 785 cannabis plants. This was a single-story duplex where several of the rooms were being used to cultivate marijuana. The living room and back patio area were also being used to cultivate marijuana. There was a false wall constructed near the front door and the exterior of the house showed condensation lines due to improper ventilation from the cannabis grow.

Pursuant to SCC 8.132.050 (E)(1), an administrative penalty in the amount of \$389,500 (i.e., \$500 per plant over six plants) was issued to the owner of the property for a violation of SCC 8.132.040(B). The citation was posted at the residence. The City Attorney also mailed a copy of the administrative penalty to the property owner. The administrative penalty in this case is appropriate due to the potential high proceeds to be gained from the cultivation of illegal cannabis.

Appellant:

The property owner's attorney Robert M. Holley stated that the property owner is 32 years old and lives in San Jose. He graduated from UC Davis in 2010 at that time he was able to buy the property. He borrowed the money from his brother and sister. His father was taking care of his property. He stated that the father would come and inspect the property every month. The lease shows that the property was rented to Xiao Jie.

Attorney Robert M. Holley stated that when the father of the property owner came to the property to do an inspection, he was told by someone living in the property that there was someone has mental issues living inside and they did not let the father inside to inspect the property. He said that the property owner had no knowledge of the high SMUD bills. He stated that the property was only worth \$241,000 and the fine was excessive.

The property owner John Nguyen stated that he lived in the property for eight months and then moved to San Jose to find the job and lived with his parents. He stated that his father was managing the property for him. He has three sets for renters, and he did not have any issues with the first two renters. The rent was \$1400 a month. He stated that he investigated Zillow to come up with the rental amount. He stated that in March, April and May of 2017 he went to inspect the property. He stated that there were children living in the property. He stated that his dad would talk to the renters. He felt like that tenants were just a normal family.

John Nguyen stated that he didn't had any suspicious of any illegal activities going on in the property. He stated that he or his father inspected the house every month.

The appellant's father and property Manager Long Nguyen stated that when his son bought the property he started to manage the property.

Long Nguyen stated that one of the tenants stayed for two years and the other tenant lived for three years. He also stated that he interviews the tenant. He stated that he advertises the property in Vietnam store and telephone post and that's how the tenant's contacted him. When he was contacted by one of the rental applicants, he met a woman with her two young children here in Sacramento. He stated that the lady told him that she works in the restaurant. He called the restaurant and verified that she works there. They told him that she will start work in two days. He also stated that the women's husband works as a truck driver.

Long Nguyen testified that he wrote on a rental agreement "No Marijuana" because when he was in a restaurant he overheard a conversation from someone stating always put no marijuana in the application and that's what he did.

He stated that he volunteered to help his son on managing the property. He stated that he did an inspection once in April of 2017 where he went into the living room and kitchen.

He stated that one time when he went to do the inspection the tenant would not open the house and they advised me not to go in the house. Suddenly he hears a loud cry and scream. He said he asked the renter who is crying so loud and screaming, they told him that its her mom and she is having a mental issues, then he walked out.

Long Nguyen stated that he went after April 2017 to inspect the property and no one opened the door for him, so he ended up calling them. He stated that the tenant told him that they were out of state. He said he did not enter the house without the tenant there for an inspection. And at that time, he didn't believe that any illegal activities are happening. He stated that the only time he found out about the marijuana grow was after receiving a letter from the City.

Long Nguyen stated that he spent over \$9,000 to fix the house. Once he fixed the property the house was inspected. He stated that his son still owns the property and the house is still vacant after they fixed the property. He said if he knew this was going on he would have called the Police and let them know about the illegal grow.

Long Nguyen stated that he lives in San Jose and has four children. He said James Nguyen is one of his sons who owns the duplex next to 6659 Spoerriwood Ct adjacent to John Nguyen property. He stated the he was managing both of the properties for his sons.

Long Nguyen testified that he met with one of the officers in regard to illegal grow for next door properties. He said he evicted the tenant from the other property. He said he did not do anything on Johns Nguyen's tenant.

Long Nguyen stated he never knew that he has the right to get inside the property anytime he feels there is something suspicious.

FINDINGS OF FACT:

After examining the evidence submitted and arguments offered by City staff, the appellant and witness, if any; the owner's efforts, or lack thereof, to comply with the City Code; the staff time and costs incurred in investigating the violation; the extent, if any, to which the fine or penalty would impose a substantial economic hardship; the seriousness of the violation; the Hearing Examiner hereby makes the following findings:

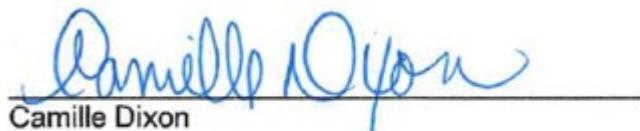
- A. The Administrative Penalty was properly issued and served.
- B. The City used County records to notify the appellants of the Administrative Penalty. The appellant indicated that the notice was sent to a Pennsylvania address, but the appellants did not provide a copy of the envelope
- C. The City provided SMUD records showing excessive power usage going back to March 2017. The appellants father was responsible for checking on the property and doing a visual inspection of the exterior of the property. He also inspected the interior of the property.
- D. However, at some point the appellants father stopped inspecting the interior of the property which would have possibly prevented the illegal cultivation

DECISION:

The Administrative Penalty issued on August 31, 2018 in the amount of \$389,500 shall be upheld.

IT IS SO ORDERED:

Dated: July 3, 2019



Camille Dixon
Hearing Examiner

PAYMENT: **Applicable** **Not Applicable**

See enclosed invoice.

If the administrative penalty is not paid within the time specified, it may be made a personal obligation of the responsible party, and if applicable may also be made a lien against the property on which the violation occurred, and may be made a special assessment collected at the same time and in the same manner as ordinary secured property taxes are collected.

APPEAL

If you desire to seek judicial review of the Hearing Examiner's decision, you must file a petition for judicial review with the Sacramento County Superior Court either no later than the 90th day following the date of this decision per California Code of Civil Procedures Sections 1094.5 and 1094.6, or the 20th day following the date of service the decision per California Government Code Section 53069.4.

City of
SACRAMENTO

Office of the City Manager
Cannabis Policy & Enforcement
915 I Street, Second Floor
Sacramento, CA 95814-2604
RETURN SERVICE REQUESTED

HE 18-276004 6699 Spoerriwood Ct SC

John Nguyen
2867 Aetna Way
San Jose, CA 95121

REURN TO 957 NFE 1 91810007
NGUYEN, JOHN
459 LATONA CT
SAN JOSE CA 95111-1715
RETURN TO SENDER
SS1938202 2664



US POSTAGE
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